

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JASON CORNELL, DIN 01B0751,

Petitioner,

-vs-

**No. 06-CV-0734 (MAT)
ORDER ISSUING WRIT
OF HABEAS CORPUS**

ROBERT KIRKPATRICK, Superintendent,
Wende Correctional Facility,

Respondent.

This Court denied the pro se petition filed by Jason Cornell ("Cornell") pursuant to 28 U.S.C. § 2254. Cornell pursued an appeal to the United States Court of Appeals for the Second Circuit and on December 1, 2011, that court issued a decision reversing the denial of habeas corpus. The Second Circuit held that trial counsel's failure to object to venue resulted in the state prisoner receiving ineffective assistance of counsel and that the state court unreasonably applied clearly established federal law. Cornell v. Kirkpatrick, No. 10-561-pr, ___ F.3d ___, ___, 2011 WL 5990653, at *8-10 (2d Cir. Dec. 1, 2011).

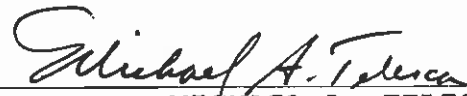
Accordingly, the Second Circuit remanded the case to this Court to "issue a writ of habeas corpus to Cornell by the sixtieth calendar day after the issuance of [their] mandate unless the District Attorney of Monroe County has, by that point, indicated an

intention to retry Cornell for the alleged rape of Victim #2." Cornell, ___ F.3d at ___, 2011 WL 5990653, at *11.¹ The Second Circuit issued their decision as a mandate that same date. See Mandate of Second Circuit in Cornell v. Kirkpatrick, No. 10-0561-pr dated December 1, 2011.

The sixty-day period referenced in the Second Circuit's decision ends on Monday, January 30, 2012, and is about to expire. To date, the Monroe County District Attorney's Office has not indicated any intention to retry Cornell or taken any steps with regard to reprosecuting Cornell. Indeed, the Court has had no communication from that office regarding this matter.

In light of the foregoing, the Court herewith issues a writ of habeas corpus releasing petitioner Jason Cornell, DIN 01B0751, from Respondent's custody. **Wende Correctional Facility, where Cornell is currently housed, is ordered to immediately discharge Cornell.**

IT IS SO ORDERED.



MICHAEL A. TELESKA

United States District Judge

DATED: January 24, 2012
Rochester, New York

¹ The Second Circuit left undisturbed Cornell's conviction for Rape in the First Degree pursuant to N.Y. Penal Law § 130.35(1) as to Victim #1. Cornell v. Kirkpatrick,